



Neutral Citation Number: [2019] EWHC 1721 (Admin)

Case No: CO/50/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 04/07/2019

**Before:**

**THE HONOURABLE MRS JUSTICE ANDREWS DBE**

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**Between:**

**PAGHAM PARISH COUNCIL**

**- and -**

**ARUN DISTRICT COUNCIL**

**-and-**

**CLAUDIA LANGMEAD**

**(and seven others)**

**Claimant**

**Defendant**

**Interested  
Parties**

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**Ashley Bowes** (instructed by **Barlow Robbins LLP**) for the **Claimants**  
**Jeremy Cook** (instructed by **Arun District Council**) for the **Defendants**  
**John Litton QC** (instructed by **James Smith (Planning Law Services) Ltd**) for the **Interested  
Parties**

Hearing date: 25 June 2019

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MRS JUSTICE ANDREWS DBE

**Mrs Justice Andrews:**

**Introduction**

1. By a Decision Notice dated 22 November 2018, reference P/140/16/OUT, following a meeting on 24 October 2018, the Development Control Committee (“the Committee”) of the Defendant Local Planning Authority (“LPA”) granted outline permission for the development of a portion of land allocated for up to 400 dwellings within Strategic Policy H SP2a Arun Local Plan 2011-2031, known as “SDI Pagham South”, adopted in July 2018. I shall refer to the application site as “the Site”.
2. The Site, formerly agricultural land, lies to the north east of the historic core of Pagham, a large and expanding village on the coast of West Sussex, and to the west of the neighbouring village of Nyetimber. The northern boundary of the Site is a road named Summer Lane. The eastern boundary is demarcated to a large extent by the Pagham Road. A public footpath, footpath 101, runs across the centre of the Site from the Pagham Road in a westerly direction, before travelling southwards along the western boundary of the site. It moves further west, away from the Site, just before the southernmost end of that boundary.
3. At the meeting, the Committee received a 52-page report prepared by one of its planning officers, who recommended that permission be granted subject to conditions. That recommendation was adopted.
4. No reasons for the decision to grant the permission were given in the Decision Notice, but there was no legal obligation on the Committee to do so. This was not one of those special (and exceptional) classes of case in which fairness required reasons to be given in the interests of transparency, see the observations of Lord Carnwath in *R(CPRE Kent) v Dover District Council* [2017] UKSC 79 [2018] 1 WLR 108 at [50]–[60]. This was common ground.
5. In the section of the report entitled “*Built Heritage and Listed Buildings*”, after citing relevant passages from the current National Planning Policy Framework (NPPF), the planning officer referred to a number of listed buildings situated within close proximity to the Site, including Pagham’s medieval Grade 1 listed Thomas à Becket church, (“the Church”) which lies to the south west of the Site. He considered the impact that the proposed development would have on each of these buildings and/or their settings. He also summarised the views of Historic England, the statutory consultee, (who had not objected), and correctly informed the Committee that the LPA’s Conservation Officer had raised no objection.
6. In the final paragraph of that section, the planning officer set out his conclusions:  
  
*“Therefore, it is considered that the proposed development will preserve the setting of listed buildings surrounding the site and as such would accord with policies HER SP1, HER DM1 and HER DM4 of the Arun local plan.”*

He added:

*“It should also be considered that the proposed development makes a significant contribution to the Local Planning Authorities housing land supply and is an*

*allocated site within the Arun Local Plan. Therefore, it is considered that the public benefits of the development would outweigh any harm to the setting or significance of heritage assets in accordance with paragraphs 196 and 197 of the NPPF”.*

7. The local Parish Council, the Claimant in these proceedings, objected to the proposed development (albeit on grounds wholly unrelated to heritage) and its objections were taken into consideration in the planning officer’s report. It accepts that the decision to grant planning permission was one which a reasonable LPA, properly directing itself, would be entitled to reach. However, it claims judicial review of the decision on two grounds, namely:
- i) The Committee failed to have regard to the duty under s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”);
  - ii) The planning officer materially misled the Committee by inadequately summarising the views of Historic England.

Both these grounds are concerned with the planning officer’s assessment of the impact that the development would have on the setting of the Church.

### **The statutory duty**

8. Section 66(1) of the Listed Buildings Act states that:

*“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”*

*“Preserving”* in this context means *“doing no harm to”*.

9. The current version of the NPPF contains the following relevant provisions:

#### **Paragraph 189**

*In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance...*

#### **Paragraph 190**

*Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development which may affect the setting of a heritage asset), taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.*

Paragraph 192

*In determining planning applications local planning authorities should take account of:*

- a) *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b) *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic viability;*
- c) *the desirability of new development making a positive contribution to local character and distinctiveness.*

Paragraph 193

*When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, (and the more important the asset, the greater the weight should be). This is irrespective of whether any harm amounts to substantial harm, total loss or less than substantial harm to its significance.*

Paragraph 194

*Any harm to...the significance of a designated heritage asset ... from development within its setting... should require clear and convincing justification....*

Paragraph 196

*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal....*

10. Paragraph 197 of the NPPF relates to non-designated heritage assets and therefore does not apply to the Church; however, the Church was not the only heritage asset in the vicinity of the Site. That is why the planning officer also referred to paragraph 197 in his report. It states that:

*The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset."*

11. Paragraph 193 of the NPPF reflects the approach to the s.66(1) duty laid down by the Court: see *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137, [2015] 1WLR 45 especially per Sullivan LJ at [24]-[29].
12. Where the heritage provisions in the NPPF are specifically brought to the attention of the decision maker by the planning officer in his report, as they were here, it can be

inferred that the decision-maker (in this case, the Committee) has properly taken all those provisions into account, absent some positive contrary indication: *Jones v Mordue* [2015] EWCA Civ 1243, [2016] 1 WLR 2682 at [28]. It is not for the LPA to establish that it complied with its duty under s.66(1); it is for the challenger to demonstrate that at the very least there is substantial doubt that it has: *R (Palmer) v Herefordshire County Council* [2016] EWCA Civ 1061, [2017] 1 WLR 411 per Lewison LJ at [7].

13. Although Dr Bowes, on behalf of the Claimant, accepted that the relevant heritage provisions of the NPPF were brought to the attention of the Committee in the report, he contended that there was a positive contrary indication, because the planning officer misunderstood the heritage evidence submitted in support of the application, and equated a “less than substantial” harmful impact with a less than substantial objection, thus falling into the type of legal error recently considered by Kerr J in *R(Liverpool Open and Green Spaces Community Interest Company) v Liverpool City Council* [2019] EWHC 55 (Admin). Alternatively, if the planning officer had formed the view that there was no harm, and therefore the proposed development would preserve the setting of the Church, he failed to explain to the Committee that the applicant’s consultant on heritage matters took a different view and why he, the planning officer, did not accept that view.
14. The primary argument is based on a premise that is factually incorrect, and, for reasons which will become apparent, I regard the alternative argument as misconceived.

### **Factual Background**

15. The application to develop the Site was submitted in 2016 for the development of 400 dwellings, a care home, a primary school, a local centre, the provision of land for a scout hut, safeguarding of land for the Pagham Harbour Cycle Route, public open space, and allotments.
16. In support of the application, and as envisaged by paragraph 189 of the NPPF, the applicant (the 6<sup>th</sup> Interested Party – the other Interested Parties are the landowners of the Site) submitted a Heritage Impact Assessment (“the HIA”) by Richard K Morriss & Associates, a consultancy which specialises in the archaeological and architectural analysis of historic buildings and planning advice related to them. The HIA was commissioned by the applicant, to assess the heritage value of the Site and the potential impact of the development proposals on the significance of various listed buildings, including the Church, together with other designated and non-designated heritage assets nearby.
17. The author of the HIA identified the Church as the only building in the parish that properly reflects the medieval importance of Pagham. He explained that the churchyard was effectively surrounded by residential developments or car parking, and that there were no clear views from the Church or out of the churchyard to the surrounding countryside. In this respect, he observed that the close setting of the Church had been severely compromised by the modern developments.
18. He then explained that because of the flat and fairly featureless nature of the large fields to the north of the Church, its tower is a landmark visible from long distances.

He said these vistas do contribute to the wider setting of the Church, despite the modern properties that lie immediately in front and to the side of it, which tend to blend into the background. In assessing the heritage impact of the development on the Church and its setting, on page 29 of the HIA he said that there would be a slight reduction in the full extent of the longer distance views of the church tower from the fields to the north. Most of these vistas will be retained, including the more important ones from the north and north-west. Those views eastwards are terminated by the hedgerow and the rooftops of the continuous row of housing along Pagham Road; the proposed development will marginally alter the detail of that termination, but not its general effect.

19. The consultant then identified that there would be what he described as a “*slight reduction in the angles of view*” from the north-east from Summer Lane – where it is not developed for housing – and through the hedgerow along the west side of Pagham Road just to the south of Nyetimber. Summer Lane is the northernmost boundary of the Site and furthest from the Church; given the location of Nyetimber, the part of the Pagham Road he refers to also appears from the plan to be north of the footpath. He said: “*this impact is considered to cause only very slight harm to the wider setting of the church under the relevant guidelines*”.
20. In the concluding section of the HIA, on page 43, the consultant expressed the view that the proposed development would have a neutral impact on most of the designated or non-designated heritage assets adjacent to the site. He continued:

“*the only slight impact of note could be in the wider distant setting of the parish church of St Thomas à Becket from the north-east. However, considering the survival of most of the remaining vistas that include the church tower in the distance, and the relatively low level of the significance of these views because of the erosion through modern development, this is considered to amount to very limited ‘harm’ under the guidance of the National Planning Policy Framework.*

*As this impact could be considered ‘less than substantial’ in the context of the NPPF, it should be weighed against the public benefits of the proposal. The benefits of the scheme as a whole are considered to easily outweigh the very limited amount of ‘harm’ and include the potential to enhance the setting of the settlement by introducing improved housing stock, landscaping, community facilities, and other amenities.” [Emphasis added].*
21. In short, the consultant took the position, out of what can realistically be termed an abundance of caution, of identifying a possible restriction on the angle of a distant view of the church tower (including via a gap in hedgerows which otherwise blocked the view), a view to which he ascribed “low level” significance, as the only matter which might arguably be regarded by the LPA as harmful to the wider setting of the Church. He was confident that even if it were to be so regarded, a proper application of the balancing exercise by reference to the NPPF guidance and the s.66(1) duty would come down firmly in favour of allowing the development.
22. Historic England responded to the consultation in a letter dated 8 February 2017 from Alma Howell, an Assistant Inspector of Historic Buildings and Areas, to Claire Potts, the LPA’s strategic development team leader. After describing the Church and the area immediately around it in Pagham village, Ms Howell said: “*the character of the*

*lane and the open fields to the north and west clearly assist in helping to understand and appreciate the rural origins of St Thomas à Becket and the historic core of Pagham and contribute positively to their setting.”* She went on to refer to the relevant paragraphs of the NPPF (including what are now Paras 193 and 196) before setting out what she had seen on a site visit.

23. Ms Howell said that views directly north towards the Site were largely contained by modern bungalows and the Old Cottage (another listed building) directly opposite the Church, although the aspect is open to the north-west with views to the flat open farmland on the other side of the lane. Historic England therefore agreed with the heritage statement [i.e. the HIA] that direct views of the development site from the church and churchyard were all largely contained by the modern bungalows opposite. Ms Howell added: *“However, I also walked across footpath 101 that crosses the application site, and where there are views to the church tower, providing a local landmark within the open farmland.”*
24. Ms Howell did not suggest that those views were likely to be restricted or adversely impacted in any way by the development. Moreover, despite having obviously read the HIA, she did not decide to walk any further north than the footpath to ascertain if there was likely to be any detrimental impact on the even wider setting of the Church caused by any restriction in the views of its tower from the farthest end of the Site to the north-east or via the gaps in the hedgerows along the western side of the Pagham Road.
25. Ms Howell’s letter continued by recommending the LPA to refer to some recently published guidance from Historic England. She expressly left it to the LPA to judge the contribution that the Site made to the significance of the Church and the understanding of its medieval and rural origins, and to look for opportunities for the new development to enhance its significance, as required by the NPPF (and the Local Plan). She also advised the LPA that they should ensure that any potential harm was avoided or minimised by the implementation of measures such as landscape screening. Provided this was done, Historic England had no objections to the application. It is not suggested that the LPA has failed to follow that advice.
26. The LPA’s Conservation Officer Angela Haywood responded to the application, but her written response concentrated on the impact of the proposed development upon a designated Area of Special Character (ASC) which was close to Nyetimber. She stated that the impacts of the proposed development on listed buildings in close proximity to the site were reviewed elsewhere in the planning process.

### **The Planning Officer’s Report**

27. In his report, the planning officer considered the local policies referred to in the recently adopted Arun Local Plan. In that context he said:

*“The application was accompanied by a heritage impact assessment and the impact of the proposals upon the setting of nearby heritage assets has been considered as part of this application. It has been concluded later in the report that the proposals will not result in any significant impact upon nearby heritage assets. Thus, the proposed development is deemed to accord with policies H SP2 (c), (m) and H SP2a (b) of the Arun Local Plan.”*

28. In the later section of the report foreshadowed by that passage, namely, the section entitled “*Built Heritage and Listed Buildings*” whose conclusion I have quoted in paragraph 6 above, the planning officer said this about the Church:

*“Further to the south of the application site is St Thomas à Becket, a Grade 1 listed medieval church which was restored in 1837. The listed building sits within a verdant churchyard on Church Lane and enjoys a sense of enclosure from the boundary walls and mature trees. The church is situated on the edge of the built-up area boundary and is accessed via a semi-rural Lane. Further to the south and separated from the church by Church Farm Holiday Village is Becket’s Barn, the remains of a former archbishop’s palace designated as a scheduled monument and listed building. The church and former archbishop’s palace have a clear historic relationship and reflect the medieval importance of the settlement of Pagham.*

*Immediately adjacent to the church is Old Cottage, an 18<sup>th</sup> century thatched cottage which together with the church forms a picturesque grouping. Despite the more modern infill bungalows along Church Lane it has been identified that the church and other cottages along the lane keep the old character remarkably well. This small group of listed buildings along Church Lane and Pagham Road forms the ‘historic core of Pagham’. The rural character of the lane and open fields to the north assist in helping to understand and appreciate the origins of St Thomas à Becket church and the historic core of Pagham and contributes positively to their setting.*

[The final sentence of this paragraph is an unattributed, almost verbatim quotation from the letter from Historic England, see paragraph 22 above].

*The impact of the proposed residential development has been considered by Historic England in their consultation response of 8 February 2017, in which it was stated that;*

*“Historic England agrees with the heritage statement that direct views of the development from the church and churchyard are largely contained by the modern bungalows opposite.”*

29. The officer then addresses a different point made by Historic England about the potential impact on listed buildings of an increase in traffic and noise, before continuing:

*Views of the church are restricted from Pagham Road due to the height of boundary screening along the eastern boundary of the application site, with the church spire becoming visible at the southernmost end of Pagham Road, where it meets Church Lane. The development will have a limited impact within the street scene of Church Lane by virtue of the proposed residential development being situated approximately 255m to the north of Church Lane. Which in conjunction with the hedgerows and built form to the north of Church Lane will limit the development’s visibility from the Grade 1 listed building.*

*It is acknowledged that the proposed development will impact upon views of the Grade 1 listed building from footpath 101 to the north but it is considered that whilst the development will have an impact on the setting of the Grade 1 listed church that this impact is not substantial or significant.”*



30. He then refers to a cluster of listed buildings to the north-east of the site, and to the ASC, and summarises the views of Ms Haywood on that subject, before reaching the conclusion set out in paragraph 6 above.

### **Consideration of Planning Officers' reports**

31. The question whether to grant or refuse planning permission involves the significant exercise of planning judgment by a specialist committee whose members can be expected to have substantial local knowledge and an understanding of planning principles and policies. The function of the planning officer's report is not to decide an issue or to determine an application, but to inform the committee of considerations relevant to the application, including considerations which the LPA is mandated by legislation to take into account. Subject to such mandatory considerations, the question of what (and how much) information goes into the report is a matter for the planning officer to decide, and that decision is only susceptible to challenge if it is irrational. The report cannot be challenged on the basis that something was omitted, which the challenger contends ought to have been included, unless it creates a substantially misleading impression.
32. The principles to be applied by the court in determining challenges to planning permissions are well established. There is an excellent summary by Lindblom LJ in paragraph 42 of his judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314. I do not propose to repeat it here, but I have borne those principles well in mind.
33. I wholeheartedly endorse the observations made by Lindblom LJ in the preceding paragraph of that judgment about the need for judicial vigilance against excessive legalism infecting the planning system. I agree with him that planning officers and inspectors are entitled to expect - in every case - good sense and fairness in the court's review of a planning decision, not the hypercritical approach the court is often urged to adopt and, sadly, was being urged to adopt in this case. Lindblom LJ's observations are part of a long line of similar pronouncements, including at the highest judicial level, but they appear to be falling on deaf ears. This case is yet another example of the type of nit-picking scrutiny of a planning officer's report which is to be utterly deprecated.
34. In the absence of evidence to the contrary, it may reasonably be assumed that in adopting the planning officer's recommendation, the members of the Committee followed the advice that he gave them, including as to their legal duties. It may also be reasonably inferred in such circumstances that members of the Committee followed the reasoning of the report: see e.g. *R(Zurich Assurance Ltd t/a Threadneedle Property Investments) v North Lincolnshire Council* [2012] EWHC 3708 (Admin) per Hickinbottom J at [15], and, in the specific context of the s.66(1) duty, *R(Palmer) v Hertfordshire Council* (above), per Lewison LJ at [7]. Dr Bowes relied on observations of Lord Carnwath in *R (CPRE Kent) v Dover District Council* (above) to similar effect at [48]; but those observations were made in the context of an Environmental Impact Assessment case, in which there was a positive duty to give reasons.
35. It does not follow from the fact that such an inference may be drawn, that in a case where the decision maker is under no such duty to give reasons, objectors can mount a

challenge to the decision on the basis of the alleged inadequacy or insufficiency of the reasoning of the planning officer when making his recommendations, on the basis that his reasoning is to be ascribed to the committee. I do not read Lord Carnwath's observations, made in an entirely different context, as a basis for giving *carte blanche* to those who are dissatisfied with a grant or refusal of planning permission to mount a "reasons based" challenge to the decision taken by a planning committee of the LPA simply because they adopted the recommendations of the planning officer.

36. It is well settled that applications for judicial review based on criticisms of an officer's report do not normally begin to merit consideration unless on a fair reading of the report, its overall effect is to significantly mislead the planning committee about material matters which are then left uncorrected. Minor or inconsequential errors may be excused. That is quite a different thing from arguing that the planning officer was under a duty to give further or better reasons for his recommendation. The Court should be astute to avoid imposing too demanding a standard on such reports, for otherwise their whole purpose will be defeated: see e.g. the observations of Baroness Hale in *Morge v Hampshire County Council* [2011] UKSC 2 [2011] 1 WLR 268, at [36].
37. The question for the Court is whether the substance of the report has sufficiently drawn the Committee's attention to the proper approach required by the law, and material considerations. In this case, on a fair reading of the report, taken as a whole, that is precisely what the planning officer did.
38. The purpose of the HIA was to inform the LPA of the significance of any proximate listed buildings, the contribution that the setting makes to that significance, and of any impact that the development would or might have on each building or its setting. That information would assist the LPA in deciding (i) whether there is or may be an impact on the listed building or its setting; (ii) whether that impact is harmful, in the sense that it fails to preserve the special qualities of the building or its setting, and, if it is, (iii) how substantial the harm is or may be. As the HIA in this case illustrates, impact is not to be equated with harm: there can be an impact which is neutral (or indeed positive). If the LPA adjudges the impact to be harmful, then its assessment of the degree of harm will influence the way in which the duty under s.66(1) is to be discharged.
39. In *R (The Friends of Hethel Ltd) v South Norfolk District Council* [2011] 1 WLR 1216 Sullivan LJ said at [32] that:

*"the question whether a proposed development affects, or would affect the setting of a listed building is very much a matter of planning judgment for the local planning authority"*.

In *R(Williams) v Powys County Council* [2017] EWCA Civ 427, [2018] 1 WLR 439, in which that dictum was quoted with approval at [55], Lindblom LJ pointed out at [53] that the circumstances in which the s.66(1) duty has to be performed where the setting of a listed building is concerned will vary considerably, and with a number of factors, including but not limited to the nature, scale and siting of the proposed development, its proximity and likely visual relationship to the listed building, the architectural and historical characteristics of the listed building itself, local

topography, and the presence of other features – both natural and man-made – in the surrounding landscape.

40. The assessment of whether any harm would be caused by the impact of the development on the heritage asset or its setting is likewise a matter for the decision maker, not the author of the HIA. Although at one point he appeared to be submitting otherwise, Dr Bowes accepted this. In making that assessment, (and bearing in mind the guidance in para 190 of the NPPF concerning the evaluation of the significance of the heritage assets) the planning officer in this case took into consideration the information provided in the HIA, but, as Dr Bowes also accepted, neither the planning officer nor the Committee were bound by any views expressed by its author on this or any other matter of planning judgment. Indeed, an LPA and its planning officer are not obliged to accept the opinions of an applicant's consultant even on matters falling within his expertise, save in the rare circumstances in which it would be irrational not to accept them.
41. The evaluation of harm was ultimately a matter for the Committee, having been furnished with the necessary information by the planning officer. Thus, if the planning officer, having taken all relevant factors into account, was entitled to take the view that there was no harm, and therefore that the setting would be preserved, and so advised the Committee, who accepted that advice, on the face of it the decision is unimpeachable. It cannot be said that there was a failure to comply with the duty under s.66(1) or para 193 of the NPPF because there was no harm to weigh in the balance.
42. The only views of the Church as a landmark that Historic England had mentioned, following their inspector's site visit, were the views across the fields to the north, specifically from footpath 101. Historic England deliberately left it to the LPA to decide if any potential impact on those views was detrimental to the setting of the Church. The planning officer's report accurately summarised the overall assessment in the HIA about the views of the Church from footpath 101, in the short paragraph beginning "*it is acknowledged that*" and ending "*this impact is not substantial or significant*" quoted in paragraph 29 above.
43. At the time when permission to bring this claim was granted, the Claimant had misinterpreted that paragraph as an expression of the planning officer's own views, but this matter was clarified in a subsequent witness statement, the contents of which I have no reason to doubt. Indeed, the paragraph appears in the context of a general overview and summary of the information from all the different sources that the officer considered relevant to the matters set out in the key paragraphs of the NPPF to which he had properly drawn the Committee's attention at the start of that section of his report.
44. Bearing in mind that reports of this nature are not always perfectly expressed, and are not to be read as though they were a pleading or a statute, I regard that paragraph as giving a fair and accurate overview of what was said in the HIA about the nature and extent of the likely impact of the development on the wider setting of the Church, specifically so far as the views from the footpath running across the Site were concerned. The paragraph does not carry with it any implication that the impact referred to is *harmful*; indeed, so far as those views were concerned, that was not the view of the heritage consultant.

45. The HIA indicated that the only possible matter which “*could*” be regarded as causing “*very limited harm*” to the setting of the Church was a slight reduction in the viewing angle from the north-east at the furthest distance of the Site from the Church, or else in an area along the Pagham Road where the boundary hedges were already obscuring the view. Moreover, those views were described by the consultant as being of “*fairly low-level significance*” because of the existing modern development, whereas he said the more important views would be unaffected. Thus the consultant had only expressed any concern about the impact on views from a different angle, further afield, from the north-east, which could rationally have been regarded by someone familiar with the landscape as not contributing to the “setting” of the Church or its significance at all. The planning officer, having considered the HIA, was perfectly entitled to disregard those matters and omit them from his report.
46. The assessment the officer made that the development would preserve the setting of all listed buildings surrounding the Site and accord with the relevant policies in the local plan, was plainly open to him as a matter of planning judgment. If there is no substantial or significant impact on the setting of a listed building, the rational conclusion can be drawn that such minor impact as there may be, is not harmful, and the significance of the setting is preserved.
47. The second half of the planning officer’s conclusion represents the fallback position that if, contrary to his view, the Committee were to reach the conclusion that there was (or might be) any harm to the setting or significance of heritage assets, including the Church, then even after giving the appropriate weight to that harm it would be outweighed by the public benefits of the development. Although the planning officer did not say so, that accurately reflected the views of the author of the HIA.
48. The members of the Committee would be entitled to draw on their own local knowledge when deciding whether to accept the officer’s assessment that the setting of the listed buildings, including the Church, would be preserved. The planning officer did not attempt to assess the degree of harm himself, for the simple reason that he had concluded that there was none (and had said so). However, he drew the Committee’s attention to the legal test they had to apply if they disagreed with that assessment.

#### **Ground 1- discharge of the s.66(1) duty**

49. The Claimant’s misunderstanding of the paragraph in the report beginning “*it is acknowledged that*” led it to contend that the planning officer had misinterpreted the HIA, whose author’s views about “harm” he had (supposedly) espoused in that paragraph. As I have already mentioned, the Claimant’s primary argument was that the planning officer fell into error by assuming that because an impact on the setting which the expert had identified as harmful was not substantial or significant, the setting was preserved. This meant the Committee was misled into thinking there was no need to give “great weight” to the harm as required by Paragraph 193 of the NPPF. Once there was a finding of harm, of whatever degree, the duty to give that harm “great weight” in the balancing exercise was engaged. Therefore, it was submitted, there was clear evidence displacing the presumption that the guidance in the NPPF set out in the officer’s report had been followed, and there had been a material error of law.

50. Quite apart from the conflation of “impact” with “harmful impact”, the factual premise on which that argument was based is incorrect. The paragraph in question was not expressing the planning officer’s own views. Therefore, there is no need to consider that argument further.
51. The elucidation of the report led to the difficulty from the Claimant’s perspective that it could not challenge the planning officer’s conclusion that the setting was preserved, however much it disagreed with it, because that conclusion was rational and all material considerations were taken into account. This drove Dr Bowes to rely upon the alternative argument, which appears to be novel. He submitted that, where an expert has provided expert opinion evidence applying a recognised technique, the decision-maker is under a positive obligation to engage with that expert evidence and, if they disagree with it, to give the reasons why. In this case the author of the HIA had advised that there was a harmful impact on the setting, albeit a slight one. The planning officer was free to depart from that advice, but if he did so, he had to explain why he was rejecting it.
52. In support of that submission, he relied on *R (NHS Property Services Limited) v Surrey County Council* [2016] 4 WLR 130. That was not a planning case, but a case about a village green. Gilbert J decided that the committee which made the decision was under an obligation to give reasons for disagreeing with the recommendation made by its inspector. The decision must be read in that context, which is very different. The situation in the present case is not even arguably analogous.
53. One of the matters that Gilbert J had to ascertain was whether, in the light of that duty to give reasons, the committee’s reasoning on the subject of “neighbourhood” was adequate. As he pointed out, the inspector’s expertise lay in the law and practice relating to village greens, not in their identification, even assuming that such expertise could exist. At [116]-[117] he stated that the cohesion of a neighbourhood was not something which could be assessed by using some recognised technique, and that it was quite different from topics of the type where a proper appreciation is dependent to varying degrees of significance on expert knowledge. He gave some examples of the latter, in the planning context, before concluding that the cohesion of the community is essentially a matter of impression, where elected members of the committee could have just as much expertise as the inspector.
54. It was suggested that Gilbert J was thereby indicating that where a proper appreciation of the topic *is* dependent upon expert knowledge, there is a positive duty on the decision maker to give reasons for rejecting the expert’s views. From that premise, it was then submitted that where the reasons for the decision are to be found in a report of the person advising the decision maker, the duty extends to that person.
55. I regard every stage in that argument as fundamentally misconceived. I do not read the judgment in the *NHS* case as going anywhere near supporting the proposition that there is an obligation on a planning officer to specifically engage with the opinions of a consultant instructed by the applicant (or, for that matter, by an objector to or supporter of the application). Subject to rationality, and any mandatory legislative requirements, he is free to take those opinions into account or to disregard them; he can make a value judgment about the relevance and usefulness of the contents of the expert report. If he does take them into account, he can choose what he accepts and what he rejects and how much weight to place on them.

56. He does not have to give reasons in his report for disagreeing with an assessment made by an expert who has expressed an opinion on a matter within his expertise, let alone where (as here) the expert has expressed a view on a matter which the decision maker has to determine, applying planning judgment. There is no such obligation, even on the decision maker, who is not the planning officer. Even in a situation in which, unlike the present case, the decision maker is under a duty to give reasons for his decision, he does not have to give reasons for those reasons.
57. In any event, “harm” to a landscape setting is not something that can be assessed by objective criteria using some recognised technique. The applicant’s consultant was able to explain how the vistas from the north over the fields towards the Church tower contributed to its significance, and how the development might affect those vistas and vistas from further afield. Armed with that information, (if the planning officer accepted it), the assessment of “harm” was largely a matter of aesthetic impression on which two people familiar with the vistas described could reasonably differ.
58. The planning officer was in just as good a position as a consultant on listed buildings to form a view about whether the slight impact on a long-distance view of the Church tower, from the angle and positions to the north-east described in the HIA, (or indeed from anywhere else) failed to preserve the special qualities of the setting of the Church. Ultimately that was a matter of planning judgment, not a matter of expert opinion. He was entitled to use his common sense and local knowledge and to refuse to accept the consultant’s suggestion that the identified restriction “could be” of a nature which harmed the Church’s wider setting and therefore to be given “great weight”.
59. Given his conclusion that the setting was preserved, it does not matter whether the officer thought the “wider setting” of the Church stopped short of those two locations, or whether he thought that even if the wider setting of the Church encompassed the area as far afield as Summer Lane, the likely impact on the vistas from that location was so insignificant as to be disregarded, or whether he thought it made no appreciable aesthetic difference. He was not obliged to say anything more than he did.
60. Thus, once it is accepted (as it was, and had to be) that it was rationally open to decide that there was no harm to the wider setting of the Church, which was the conclusion of this planning officer, and implicitly endorsed by the Committee when they accepted his recommendations, there was no legal duty on anyone within the LPA to explain why they disagreed with the contrary view that had been expressed by the consultant engaged by the applicant for planning permission. The failure to do so does not give rise to a viable ground of challenge, and there is no basis for this Court to conclude that the Committee failed to comply with its s.66(1) duty, to which it was properly directed by the planning officer.
61. As a variant on the “reasons” argument it was submitted that the Committee was materially misled because its members were not told that the consultant had expressed the opinion that there was some harm to the wider setting of the Church, albeit of a very limited nature. I reject the submission that the planning officer was under any obligation to tell the Committee anything about the views of the applicant’s heritage consultant. Subject to fairly reflecting the views of the statutory consultee, Historic England, which he did, it was up to the planning officer to decide what other

information should go in the report and how much detail to include. There is and can be no challenge to the rationality of that exercise of judgment.

62. Finally, it was submitted that, if the insignificant and insubstantial “impact” referred to in the paragraph in the officer’s report beginning “*it is acknowledged that*” was *not* to be understood as meaning a harmful impact, it created a materially misleading impression of what had been said in the HIA. However, I have already found that paragraph to be a fair summary of the specific matters in the HIA to which it related.
63. The planning officer did not mislead the Committee, let alone mislead it in any material respect. He made it clear that there was an HIA and that it had been considered, and that the applicant/its consultant accepted that the proposed development would have some impact on the views of the Church from the wider countryside, specifically the footpath, but that impact was not significant or substantial. That was true. It was all he needed to say. He was under no obligation to say that the consultant had identified something which could be regarded as minor harm to the vistas from a different perspective but that he, the officer, disagreed with that assessment.
64. The officer then said that he considered the development would preserve the setting of all the listed buildings in the vicinity. He furnished the Committee with all the information he rationally considered would help them to decide whether they agreed or disagreed with that assessment. It was not materially misleading for the planning officer to omit the consultant’s opinions on harm, on how the duty under s.66(1) should be approached, and on how the planning judgment should be exercised. But even if I am wrong, and what the planning officer said may have given a misleading impression that the author of the HIA had suggested that there would be no harm to the wider setting of the Church, when he actually thought there could be some very limited harm, that did not matter, because the planning officer took a different view on a matter of planning judgment, and that view was rational.
65. Accordingly, the LPA did discharge its duty under s.66(1) because it accepted that there was no relevant harm to weigh in the balance. On the basis of the material before him, having taken all relevant information into account, the planning officer was entitled to so advise the Committee. There is no basis for challenging his report on the basis of a failure to give express reasons for disagreeing with the consultant, let alone a failure to set out the consultant’s views on “harm” which he did not accept. This was a value judgment which was entirely a matter for him. Ground 1 of this claim for judicial review is fundamentally misconceived and must fail.

### **Ground 2 – the views of Historic England**

66. I can deal with Ground 2 more shortly. This was a complaint that the Committee was materially misled by the omission from the officer’s report of the observation in Ms Howell’s letter that she walked across footpath 101, which crosses the application site, and where there are views to the church tower, providing a local landmark within the open farmland. Dr Bowes wisely did not dwell on it in his oral submissions.
67. First, the complaint is made that the officer’s report failed to tell the Committee that this was Historic England’s assessment of visibility of the Church, in the context of providing advice about its significance. That is true, but the submission that the

omission could have misled anyone is simply untenable. The officer's report made it plain that the views from the north over the open fields, including from the footpath, made a positive contribution to the setting of the Church. The members of the Committee, with their local knowledge, probably did not need to be told that.

68. Nevertheless, the planning officer quoted verbatim from what Ms Howell had said about the open fields to the north and west contributing positively to the setting of the church and the historic core of Pagham. Insofar as complaint is made that he did not specifically attribute that quote to Historic England, I reject it as the type of semantic analysis of a planning officer's report which this Court and the Higher Courts have gone to great pains to try and stamp out. What matters is that the planning officer acknowledged without demur the positive contribution of the views of the Church tower from the north (and west) when making his assessment of whether the proposed development would preserve the setting of the Church. It does not matter whether the source of the information about that positive contribution was the HIA, Historic England or his own knowledge of the area. This matter was never in dispute.
69. Next, it is said that the manner in which the text (of Ms Howell's letter) has been "chopped up" leaves the reader with the impression that Historic England agree with the applicant's view as to the visual containment of the church, but that they had made no mention of the importance of the view from footpath 101, or that the Church when viewed from that location is a local landmark. That had the effect of downplaying the contribution made by the Site in its present undeveloped form to the significance of the Church and therefore affected the assessment of harm. I regard this complaint as specious.
70. There was no question of this officer's report downplaying the importance of the contribution that the view of the Church tower over the fields made to the significance of the Church, or of misrepresenting the views of Historic England by omitting to mention that Ms Howell had walked along the footpath and seen the tower. As I have pointed out in paragraph 68, the planning officer expressly acknowledged the positive contribution of the views of the church tower from the north. Historic England had no concerns about the view from the footpath or across the fields to the north being impacted by the development. Ms Howell did not suggest that the views from the footpath were likely to be impeded by the development. Nor did she suggest that there would be any detrimental impact to the setting of the Church caused by restrictions to the views to its tower from further afield; despite having read the HIA, she left that to the LPA to assess. Whilst the fact that she walked across the footpath and could see the church tower is not something that the planning officer put in his report, there was no reason why he should have done. It would have added nothing of relevance.
71. Especially in the light of the paragraph beginning "*it is acknowledged that*" the Committee could not have been left in any doubt as to the importance of the view from footpath 101 to the setting of the Church. The Committee would have been given the impression that Historic England did not raise any specific objection to the development, and that was true.
72. This ground, also, must fail.



### **Section 31(2A) of the Senior Courts Act 1981**

73. Given that I have rejected both the grounds of challenge to the decision, it is unnecessary to me to go on and consider whether, even if they were well-founded, it was highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred (see section 31(2A) of the Senior Courts Act 1981).
74. However, even if the planning officer had quoted verbatim in his report from the passages in the HIA on pages 29 and 43 about the impact to the angles of view that the consultant considered caused or could cause “only very slight harm” to the wider setting of the church under the relevant guidelines, and the Committee chose to accept that opinion rather than the views of the planning officer that the setting would be preserved, I am in no doubt whatsoever that the alternative view espoused by the planning officer in his conclusion that the public benefit of this development outweighed any harm to that wider setting would have been adopted by the Committee, even after giving the harm “great weight” in accordance with the NPPF, and that the outline permission would still have been granted.
75. In so concluding, I am not substituting the Court’s own views on a matter of planning judgment, as Dr Bowes suggested I would be if I were to venture down that path. I make that assessment of the highly likely outcome based firmly on the evidence, specifically the way in which the planning officer, who was fully aware of the views of the consultant, dealt with the matter in the alternative, on the hypothesis that there may have been some harm. There was no other evidence of harm to the setting of the Church besides the views expressed by the consultant in the HIA, and the consultant himself thought that such possible harm as he had identified was plainly outweighed by the public benefit. The statutory consultee, Historic England, did not object on heritage grounds. Nor did anyone else, including the Parish Council, who have obviously been poring over the planning officer’s report trying to find any basis that they can for overturning the decision.
76. Dr Bowes suggested that it would be pure speculation to try and second-guess how the members of the Committee would have weighed the identified harm to the setting of the Church in the balance, given the obligation to give it “great weight”. Realistically, though, a minimal impact on the angle of the long-distance view of the church tower from the north-east was never going to be a serious obstacle, especially as the Committee were told that the more important direct views from the north and west would be preserved, and there was already some impairment to the slightly impeded view, caused by existing development.
77. Thus, even if I had been persuaded that the decision was susceptible to judicial review, I would have refused any relief as a matter of discretion pursuant to s.31(2A).

### **Conclusion**

78. For all the above reasons, this claim for judicial review is dismissed.